

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
*[Signature]*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/283,596 04/10/99 CARPENTIER S 4652CIP1DIV

EDWARDS LIFESCIENCES LLC  
LAW DEPARTMENT  
ONE EDWARDS WAY  
IRVINE CA 92614

IM22/1006

EXAMINER

REDDING, D

ART UNIT	PAPER NUMBER
----------	--------------

1744

DATE MAILED:

10/06/00  
*[Signature]*

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/283,596	CARPENTIER ET AL.
	Examiner David A Redding	Art Unit 1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

#### Status

1) Responsive to communication(s) filed on 09 August 2000.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-25,28-42 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 2,3,5,6,9,17-19,22,24,28,29,32,41 and 42 is/are allowed.

6) Claim(s) 1,4,7,8,10,12,13-16,20,21,23,25,30,31,40 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some \* c) None of the CERTIFIED copies of the priority documents have been:

1. received.

2. received in Application No. (Series Code / Serial Number) \_\_\_\_\_ .

3. received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

#### Attachment(s)

14) <input type="checkbox"/> Notice of References Cited (PTO-892)	17) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s) _____
15) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	18) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
16) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	19) <input type="checkbox"/> Other: _____

Art Unit: 1744

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States;
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. Claims 10,11,13-16,20,21,23, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by the 1996 Fisher Scientific product catalogue, page 914.

On page 914 of the reference there is shown a stirring hot-plate with a flask which is clearly capable of containing tissue treatment fluid. The hot-plate is capable of heating any fluid within the flask and stirring the fluid using a magnetic stirring rod controlled by a magnetic drive. The fact that the claims are directed to treatment of fixed biological tissue is considered to be intended use of the apparatus and of no patentable weight. "*Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus.*" *Ex parte Thibault*, 164 USPQ 666,667 (Bd. App. 1969). See MPEP 2115.

Art Unit: 1744

3. Claims 10,11,12, are rejected under 35 U.S.C. 102(b) as being anticipated by USP 3,002,895 (Freedman).

Freedman discloses an incubator-shaker apparatus which comprises flasks 140 capable of containing treatment fluid, an orbital shaker device, and resistance heating means 94 for heating the contents of the flask. Again, the fact that applicant has limited the claims to the type of tissue being treated is of no weight. . *"Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus."* *Ex parte Thibault*, 164 USPQ 666,667 (Bd. App. 1969). See MPEP 2115.

4. Claims 1,4,7,8,25,30,31,40, are rejected under 35 U.S.C. 102(e) as being anticipated by USP 5,773,285 (Park).

Park discloses a static organ culture apparatus which comprises a container with a tissue support inside, input and output lines to provide a flow of media. Figures 3 and 5a,5b, show the tissue being arranged such that the flow of fluid is parallel to the tissue.

5. Claims 2-3,5,6,9,17,18,19,22,24,28-29,32-39,41,42, are considered to be allowable over the prior art of record.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 1744

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A Redding whose telephone number is 703-308-3910. The examiner can normally be reached on 8:00 - 4:30 Mon. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 703-308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-37718 for regular communications and 703-305-7719 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1193.



DAVID A. REDDING  
PRIMARY EXAMINER  
GROUP 1300